

# THE ADVOCATE AND NEWS



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## MCNALL IS SUSTAINED.

Judge Foster Roasts Him, But Holds That He Has Power to Examine the Travelers'.

In the Federal court at Topeka Monday Judge Foster held that the court had no power to prevent the examination of the Travelers' Accident Insurance Company, thereby sustaining the State law giving the Superintendent of Insurance such power. In his decision Judge Foster says:

"The statutes make it the duty of the Superintendent of Insurance, when he has good reason to suspect the correctness of any annual statement of an insurance company or that the affairs of any company are in an unsound condition, to make or cause an examination to be made into the affairs of such company. There must of necessity be allowed to a ministerial officer a liberal discretion when required to do an official act upon a certain contingency being made to appear. If he is acting in good faith and not in a manner clearly indicating oppression in office or abuse of discretion the courts will not interfere. It is charged by the complainant that the defendant, Webb McNall, in the proposed examination of complainant's affairs is acting in bad faith and for personal reasons, that he has no reason to suspect the correctness of its annual statements or that its affairs are in an unsound condition, and in support of these averments it has offered in evidence affidavits showing the character of examinations recently made by the defendant of other insurance companies. It seems evident from the testimony that the examinations that have been made by the defendant were of a superficial character and of little or no benefit to anyone; and it is further apparent that the charges for services and expenses of his agents making the examinations have been extortionate, and yet the question remains whether this is a sufficient reason for the court to interfere and restrain the defendant from making an investigation of the complainant's affairs. It surely cannot be offered as an objection by the complainant that the defendant's proposed examination would be superficial and of little value. It doubtless has a right to complain if any extortionate charge for services is made against it and clearly has the right to refuse payment of any such demand. It may be urged with much reason that insurance companies are not in a position to resist the payment of an unjust demand for services of this kind."

Judge Foster then quotes section 3324 of the Kansas statutes which confers on the Superintendent of Insurance authority to examine the affairs of suspected companies and, continuing, he says:

"It is quite likely that the insurance companies which have submitted to the excessive charges for services of this kind have done so under the apprehension that a refusal might result in the defendant revoking their authority to do business in the State. Certain it is that this power might be abused by an unscrupulous officer and yet it is not apparent that such apprehended danger justifies the complainant in seeking the aid of a court of equity to restrain the defendant from proceeding to make the investigation provided grounds exist

which justify the examination. The conduct of the defendant as shown by the evidence in this and other cases before the court has been so indefensible and so repugnant to the mind of every right thinking man that it is difficult to give him credit for an honest purpose in his proposed examination, and yet we have to observe and follow a rule of law which may be cited as a precedent for an honest and conscientious incumbent of the office. It cannot be said that there is an entire absence of evidence to justify the proposed examination by the defendant inasmuch as certain real estate of the complainant in this State is listed at a price largely in excess of its value, and there is an absence of any statement of defaulted interest on loans and allowing to the defendant the presumption of good faith in some degree, if possible, it may well be said that there is some reason to suspect the correctness of the complainant's annual statement. In view of the facts in this case and the discretion which ought to be vested in a ministerial officer performing such duties and the rule of law applicable to the exercise of such powers, it would not be proper for this court to stay the proposed examination by the defendant in this case. The complainant's right to relief depends upon the anticipated wrong of the defendant as inferred from his conduct in other cases, that is wrong is chiefly the apprehension on expectation that the defendant will make unreasonable and exorbitant charges for his services. I do not think that expectation is sufficient to warrant the court in holding that the defendant will act in a manner indicating oppression in office or flagrant abuse of his discretionary powers." Judge Horton, representing the company, gave notice of an appeal.

## Another Supreme Court Scandal.

New York, November 18.—A suit has been filed in a local court in which J. R. McMurren, of Washington, seeks to obtain a judgment for \$30,000 as his share of the profits of a deal engineered by Broker Edwin Barbour. McMurren claims to have furnished detailed information relative to the decision of the Supreme court in the Bell telephone case two days in advance of the handling down of the opinion, and that he had a written contract with Barbour to give him two-thirds of the profits which would accrue by investment in the stock of the company prior to the rise which would come in its value when the decision would be made public. It is a notorious fact that important decisions of the court have been obtained in advance for years, and that often the full text has been procured. This is the first time though that a claim has been made in court that this sort of information is a commodity which is bought and sold in the open market.

## Southern European Outlet.

The officers of the Kansas City, Pittsburg & Gulf railroad have secured a contract for a steamship line from Port Arthur, the southern terminus of the road to Liverpool, Hamburg and other European commercial centers. This will enable western producers to place their products on the Liverpool market at a much lower transportation charge than has ever been enjoyed before. The steamship line will be conducted with the same energy and earnestness which has made the road a success. It means much for Western farmers in the way of better prices for their products.

## TRUTH ABOUT THE SALE.

President Will Sends an Authoritative Report on the Cattle Sale at Manhattan.

In response to a telegram from the Advocate and News, asking for the truth about the recent sale of cattle at the Agricultural college, President Will sent the following statement:

Manhattan, November 20.—On October 20 and 21 the board of regents had all diseased cattle killed, and their carcasses burned. There remained thirty-nine head, which were examined by the three experts employed by the board, viz.: Dr. James Law, of Cornell University; Dr. T. A. Geddes, of the United States Department of Agriculture, and Dr. Paul Fischer, of the Kansas State Agricultural College. These experts reported to the board that "these thirty-nine animals, having been twice tested with tuberculin, with an interval of nine months, and having shown no indications of tuberculosis, have a better guaranty of soundness than have the members of any ordinary untested herd, and are therefore desirable animals for breeding purposes."

Acting on this report of the experts, the board ordered a public sale to be held November 18, 1897. On November 17 the State Live Stock Sanitary Commission came before the board and made an informal protest against the sale of the stock. They were requested to put this protest in writing, which they did, as follows:

Manhattan, Kas., November 18, 1897.—To the Honorable Board of Regents, Kansas State Agricultural College. Gentlemen: We, the Live Stock Sanitary Commission of the State of Kansas, desire to enter our protest against the sale for breeding purposes of what is known as the college herd, as we deem them unsafe to mingle with the other healthy cattle of the State, as we believe they have been exposed to and are affected with a malignant and contagious disease known as tuberculosis; therefore, if sold for breeding purposes and scattered throughout the State, they might cause the spread of said contagious and infectious disease, to the detriment and loss of the cattle interests of the State. Therefore we would respectfully recommend you to ship said college herd to some public market for immediate slaughter and sale for beef, subject to inspection.

Respectfully submitted,  
FRANK WEINSHENK,  
TAYLOR RIDDLE,  
J. W. JOHNSON.

Members of the Live Stock Sanitary Commission of Kansas.

The regents met to consider this protest, and after a full discussion of the whole matter, voted that, "Whereas scientific investigation has been made by Doctors Law, Geddes and Fischer of the health of the herd, and these experts report that the college herd is safer for breeding purposes than any untested herd, therefore be it resolved that the sale proceed as advertised."

The sale was then made. At the close of the sale the sanitary commission requested the Board to hold the cattle one hour until the Commission could consider the matter of quarantining the

stock. The Board acceded to this request, and the cattle were held one hour, when as no further communication was received from the Commission the Board directed that delivery of cattle be made to purchasers.

At a joint meeting of the Board and the Commission the Board thanked the Commission for their interest in the matter and for the advice given, but they stated they must hold the opinion of the experts to be of greater value than that of the Commission.

THOS. E. WILL.

Thirty-nine head were sold for about \$2,500. Bidders were numerous, but most of the stock went to Taylor & Valentine, of Pearl, Kas. Plenty of buyers were on hand to take the cattle. The proceeds of the sale will be used to establish a dairy herd and a dairy school, adding a feature of practical instruction which will prove of great value to the State.

## Major Hudson Takes a Hand.

That the sentiment in favor of turning down the machine that has controlled Republican politics for years, is growing is evidenced by the fact that so many of the prominent men of the party and taking that kind of a stand. In a recent interview, J. K. Hudson, who was editor of the Capital for so many years, and who is a high priest of Republicanism, says:

"A State convention that will nominate a ticket independent of the present offensive political gang, that presumes to say what the party shall or may do, and make a platform that voices the sentiment of the mass of the party will rally the voters of the Republican party as they have not been since 1888."

"For the boss and his gang to control the Republican State convention in 1898, although supported by the national administration, means disastrous defeat for the party. It is a contest within the party against petty, offensive, unprincipled bossism, and the voters of the party can, if they will, assert themselves in 1898 and place Kansas where she naturally belongs, in the column of Republican States."

"Populism is less to be feared in reclaiming Kansas than Bossism."

## Sedgwick Populists After Cone.

Wichita, November 20.—At a meeting of the Populist county committee here to-day a resolution demanding the resignation or removal of Rufe Cone from the State committee was adopted by a majority of two votes. Cone was sent for and asked to resign before the resolution was sent in, but he refused to do so. He alleges that he is not fighting the State officers, and that he did not fight the county ticket but that he had criticised the police commission and he refused absolutely to resign and announced his determination to fight. The committee resolution recommends W. A. Ayers, clerk of the Court of Appeals, to fill the vacancy which will be created if Cone is removed.

## Wichita County Bonds Illegal.

Attorney General Boyle, through his assistant, Geo. R. Snelling, has been trying to enforce the payment of \$35,000 of Wichita county bonds held by the State school fund, but Judge Andrews holds that the bonds were issued over an injunction and are therefore void. The case will be appealed to the Supreme court.